



PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference P04818300	FOR FURTHER ACTION	See Form PCT/IPEA/416																								
International application No. PCT/JP2004/005089	International filing date (day/month/year) 08.04.2004	Priority date (day/month/year) 08.04.2003																								
International Patent Classification (IPC) or national classification and IPC																										
Applicant MEIJI FEED CO., LTD.																										
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 8 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input type="checkbox"/> (sent to the applicant and to the International Bureau) a total of _____ sheets, as follows:</p> <p><input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) _____, containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p> <p>4. This report contains indications relating to the following items:</p> <table border="0"><tr><td><input checked="" type="checkbox"/></td><td>Box No. I</td><td>Basis of the report</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. II</td><td>Priority</td></tr><tr><td><input type="checkbox"/></td><td>Box No. III</td><td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td></tr><tr><td><input type="checkbox"/></td><td>Box No. IV</td><td>Lack of unity of invention</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. V</td><td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. VI</td><td>Certain documents cited</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Box No. VII</td><td>Certain defects in the international application</td></tr><tr><td><input type="checkbox"/></td><td>Box No. VIII</td><td>Certain observations on the international application</td></tr></table>			<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input checked="" type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input checked="" type="checkbox"/>	Box No. VI	Certain documents cited	<input checked="" type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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Date of submission of the demand	Date of completion of this report																									
Name and mailing address of the IPEA/JP	Authorized officer																									
Facsimile No.	Telephone No.																									

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International application No.

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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This report is based on translations from the original language into the following language _____, which is the language of a translation furnished for the purposes of:
- ☐ international search (Rule 12.3 and 23.1(b))
 - ☐ publication of the international application (Rule 12.4)
 - ☐ international preliminary examination (Rule 55.2 and/or 55.3)

2. With regard to the elements of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):*

- ☒ the international application as originally filed/furnished
- ☐ the description:

pages _____ as originally filed/furnished

pages* _____ received by this Authority on _____

pages* _____ received by this Authority on _____

- ☐ the claims:

nos. _____ as originally filed/furnished

nos.* _____ as amended (together with any statement) under Article 19

nos.* _____ received by this Authority on _____

nos.* _____ received by this Authority on _____

- ☐ the drawings:

sheets _____ as originally filed/furnished

sheets* _____ received by this Authority on _____

sheets* _____ received by this Authority on _____

- ☐ a sequence listing and/or any related table(s) – see Supplemental Box Relating to Sequence Listing.

3. ☐ The amendments have resulted in the cancellation of:

☐ the description, pages _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

☐ the description, pages _____

☐ the claims, nos. _____

☐ the drawings, sheets/figs _____

☐ the sequence listing (*specify*): _____

☐ any table(s) related to sequence listing (*specify*): _____

* If item 4 applies, some or all of those sheets may be marked "superseded."

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Box No. II Priority

1. ☐ This report has been established as if no priority had been claimed due to the failure to furnish within the prescribed time limit the requested:
- ☐ copy of the earlier application whose priority has been claimed (Rule 66.7(a)).
- ☐ translation of the earlier application whose priority has been claimed (Rule 66.7(b)).

2. ☐ This report has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rule 64.1). Thus for the purposes of this report, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

The earlier application that serves as the basis for claiming the rights of priority does not disclose the feature of including an excipient or the feature of enhancing the antioxidation power.

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Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	1-26	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1-26	NO
Industrial applicability (IA)	Claims	1-26	YES
	Claims		NO
2. Citations and explanations (Rule 70.7)			
Document 1: JP 01-098446 A (Meiji Milk Products Co., Ltd.), 17 April 1989, entire text			
Document 2: JP 3046303 B (Meiji Milk Products Co., Ltd.), 29 May 2000, entire text			
Document 3: JP 62-104552 A (Morinaga Milk Industry Co., Ltd.), 15 May 1987, entire text			
Document 4: JP 2003-253262 A (Snow Brand Milk Products Co., Ltd.), 10 September 2003, entire text			
Document 5: JP 2000-287626 A (Yakult Honsha Co., Ltd.), 17 October 2000, entire text			
Document 6: JP 2002-335953 A (Snow Brand Milk Products Co., Ltd.), 26 November 2002, entire text			
Claims 1 to 5, 8, 9, 12, 14, 16, 18, 20 and 22 to 26			
Document 1 indicates that it is possible to prevent diarrhoea and induce an increase in body weight by administering the culture solution of a well-known strain of <i>Lactobacillus</i> . In addition, document 1 also discloses the feature of carrying out neutralization cultivation within a culture medium that includes a whey-protein hydrolysate, the feature of producing a concentrate, the feature of administering the preparation to pigs, and the feature of administering the preparation to cows.			

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

Meanwhile, document 2 discloses the *Lactobacillus* strain *Lactobacillus gasseri* OLL 2716 (FERM BP-6999), and discloses the feature of using a dried product that is obtained by freeze drying the culture solution of a lactic acid bacteria. As a result, it would have been easy for a person skilled in the art to conceive of configuring the inventions that are set forth in claims 1 to 5, 8, 9, 12, 14, 16, 18, 20 and 22 to 26 in the light of the items that are disclosed in document 1 and document 2; therefore, the inventions in question do not involve an inventive step.

Claims 6 and 7

Document 5 discloses the feature of adding an excipient such as a starch or defatted milk. As a result, it would have been easy for a person skilled in the art to conceive of configuring the invention that is set forth in claims 6 and 7 in the light of the items that are disclosed in documents 1, 2 and 5; therefore, the invention in question does not involve an inventive step.

Claim 10

Document 3 discloses the feature of adding the culture residue that remains after the cultivation of lactic acid bacteria to a milk substitute for administration. As a result, it would have been easy for a person skilled in the art to conceive of configuring the invention that is set forth in claim 10 in the light of the items that are disclosed in documents 1 to 3; therefore, the invention in question does not involve an inventive step.

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Box No. V

Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

Claims 11, 15 and 19

Document 6 discloses a strain of *Lactobacillus gasseri* which exhibits an increased ability to survive within the intestinal tract. As a result, it would have been easy for a person skilled in the art to conceive of configuring the inventions that are set forth in claims 11, 15 and 19 in the light of the items that are disclosed in documents 1, 2, 5 and 6; therefore, the inventions in question do not involve an inventive step.

Claims 13, 17 and 21

Document 4 indicates that the culture products of *Lactobacillus gasseri* exhibit an anti-oxidizing effect. As a result, it would have been easy for a person skilled in the art to conceive of configuring the inventions that are set forth in claims 13, 17 and 21 in the light of the items that are disclosed in documents 1, 2, 4 and 5; therefore, the inventions in question do not involve an inventive step.

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Box No. VI Certain documents cited

1. Certain published documents (Rule 70.10)

Application No. Patent No.	Publication date (day/month/year)	Filing date (day/month/year)	Priority date (valid claim) (day/month/year)
JP 2004-189672 A [E, X]	07.08.2004	11.12.2002	
JP 2003-253262 A [P, X]	10.09.2003	28.02.2002	

2. Non-written disclosures (Rule 70.9)

Kind of non-written disclosure	Date of non-written disclosure (day/month/year)	Date of written disclosure referring to non-written disclosure (day/month/year)
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Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

The disclosure "No. 30463033" in the description (page 10, line 3) is incorrect, and should instead read "No. 3046303." In addition, the characters that were used to write the disclosure "jinkou-nyuu" [population milk] in claim 10 of the Japanese language text are incorrect, and should instead read "jinkou-nyuu" [synthetic milk].